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Department of the Environment and Water Resources

WELS Compliance Risk Management Guide For Suppliers



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A Working Document

This is a WELS Compliance Risk Management working document.
Prepared by the Water Policy Branch
Department of the Environment and Water Resources



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1 Introduction

The purpose of the *Water Efficiency Labelling and Standards Act 2005* (the WELS Act) is to provide for the establishment and operation of a scheme to apply national water efficiency labelling and minimum performance standards to certain water-use products. The aim of water efficiency labelling is to encourage the uptake of water efficient products and appliances in domestic and commercial areas while maintaining individual choice and accounting for regional variations in water supply.

The objects of the Act are to:

- Conserve water supplies by reducing water consumption;
- Provide information for purchasers of water-use products; and
- Promote the adoption of efficient and effective water-use technology.

2 Aim

The aim of this guide is to assist suppliers to:

- Develop appropriate compliance risk management (CRM) decision making, systems, practices and corporate culture for identifying and managing compliance risks under the WELS Act;
- Join with the WELS Scheme to identify and account for any significant barriers to achieving compliance and the objectives of the Scheme;
- Participate in continual improvement processes for CRM activities in the interests of the WELS Regulator and suppliers;
- Recognise that, while cost efficiency is a legitimate business concern of suppliers, managing CRM merely for least cost and minimum compliance can be a risk-laden approach; and that achieving a defensible balance between cost minimisation and adequate CRM resources is the key to cost and CRM efficiency/effectiveness; and
- Canvass ways to share principles of better CRM.

This document and other advice from WELS inspectors and the WELS Regulator on suppliers' CRM preparedness and performance must be limited to its compliance status, implementation actions for specific non-compliances, and advice about principles for developing better CRM systems and practices. This information is not to be taken to replace professional legal advice on meeting clients' legal obligations.

3 What are the WELS compliance requirements?

Offences and compliance requirements are outlined in:

- Parts 7 to 9 of the WELS Act;
- Commonwealth Criminal Code (a Schedule to the *Criminal Code Act 1995*);
- The WELS CRM Framework (refer to the WELS Compliance Risk Management page on the WELS website at <http://www.waterrating.gov.au>); and
- The WELS Inspector's Protocol (refer to the WELS Compliance Risk Management page on the WELS website at <http://www.waterrating.gov.au>).

The offences under Part 7 of the WELS Act relate to:

- *The registration of products*
It is an offence to supply unregistered WELS products which are required to be registered under the applicable WELS standard. (Section 33 of the Act)
- *Requirements for the labelling of registered products*
It is an offence to supply unlabelled WELS products which are required to be labelled under the applicable WELS standard. (Section 34)
- *Minimum water efficiency - products required to be registered*
It is an offence to supply WELS products which do not meet specified minimum water efficiency requirements required under the applicable WELS standard. (Section 35)
- *Minimum general performance - products required to be registered*
It is an offence to supply WELS products which do not meet specified minimum general performance requirements required under the applicable WELS standard. (Section 36)
- *Misuse of WELS standards and information*
It is an offence to supply WELS products and misuse the applicable WELS standard or use information that is inconsistent with the applicable WELS standard. (Section 37)
- *Information inconsistent with WELS standards*
It is an offence to supply a WELS product and use information that is inconsistent with the applicable WELS standard for that product. (Section 38)

Offences relating to misuse of information in the supply of products (Sections 37 and 38) includes (but is not limited to) information conveyed on or by:

- a product label; or
- product packaging; or
- any document or other material used for (or provided in connection with) supply; or
- any advertising that relates to the product. (Section 39)

The offences under Part 9 of the WELS Act relate to offences by occupiers of a supplier's premises when WELS inspectors are seizing or securing any evidential material on the premises. In such circumstances, occupiers of the premises must answer questions and produce documentation when asked to do so by WELS inspectors (paragraphs 51(2) (b) and (c)). Failure to comply with such a request from a WELS inspector is an offence carrying a maximum penalty of six months imprisonment.

An occupier is also obliged to provide the inspector(s) 'with all reasonable facilities and assistance for the effective execution of the warrant' (Section 54). Failure to comply is an offence carrying a maximum penalty of 30 penalty units. There is no requirement on the part of the inspector to warn a person about the penalty for non-compliance under paragraphs 51(2)(b) and (c) or Section 54.

Note that Section 63 of the WELS Act provides that a person is not obliged to comply with the provisions of Part 9 (which includes Sections 51 and 54) if this would tend to incriminate them or expose them to a penalty. Again, there is no requirement on the part of an inspector to inform a person that they are excused from complying with Sections 51 and 54 under the self-incrimination provision.

It should also be noted that the WELS Act needs to be read in conjunction with the Commonwealth Criminal Code (*Criminal Code Act 1995*). Criminal provisions under the Criminal Code apply to corporations as well as to individuals. In deciding whether to charge a corporation with an offence under the WELS Act, the WELS Regulator and the Director of Public Prosecutions (DPP) will act in accordance with the Criminal Code, and consider whether criminal code offences have been committed, including evidence that:

- the corporation's directors or a high managerial agent of the corporation, intentionally, knowingly or recklessly authorised or permitted the commission of an offence;
- a corporate culture existed within the body corporate, (i.e. an attitude, policy, rule, course of conduct or practice) that directed, encouraged, tolerated or led to non-compliance with a relevant provision; and
- the corporation failed to create and maintain a corporate culture that required compliance with the relevant provision.

What shows your corporate culture? It is evident by your corporate policy for CRM, your CRM resources, your CRM systems and practices and staff training/attitudes, your ability to maintain the relevance of your CRM over time as requirements change and issues emerge (for resolution by you and/or the

Regulator).

4 The elements of effective compliance risk management systems

Effective CRM can be underpinned by the following contemporary management elements:

- Effective compliance

Recognising that minimum cost and minimum compliance approaches are risk-laden

- Best practice

Considering the business advantages of being an industry leader in techniques for compliance and risk management and monitoring

- Continual improvement

Reviewing and revising management and monitoring techniques to handle emerging issues that exacerbate risk.

- Appropriately timed/precautionary approach to procedures

Approaches to risk management that allow margins for response to emerging risks or issues in the risk management and monitoring arrangements by suppliers

- Credibility of risk management and monitoring and reporting arrangements

Increasing the defensibility that suppliers can find in CRM and monitoring arrangements through applying the best available techniques/knowledge about how to manage risks. Identifying and reaching the “what more could we reasonably do?” threshold.

- A systematic approach.

Maximising the performance, cost-effectiveness and defensibility of suppliers’ CRM. This includes clear management commitment, arrangements based on a compliance risk assessment, systems to deliver prevention-solutions for compliance risks, assigned responsibilities, training and awareness of staff and contractors, appropriate record keeping, and self-auditing with review and revision where necessary.

5 CRM components

The following components can be included in CRM arrangements to assist

suppliers to meet compliance requirements under the Act:

5.1 Overview of CRM for planning purposes

To build an effective starting point for CRM you may need to commit to and do the following.

- Develop and implement a policy for your organisation, comprising overarching risk management and monitoring arrangements binding all relevant management, staff and contractors.
- Establish an initial review on which to base the development and implementation of the arrangements.
- Identify and set risk management responsibilities.
- Provide the resources.
- Set the scope of the arrangements to cover all relevant managers, staff and contractors and all relevant business processes.
- Build new CRM procedures.
- Implement CRM continual improvement and better practice where appropriate.

5.2 Assessing needs and setting the scope of CRM arrangements

Things to identify and address:

- Legal responsibilities under the Act and conditions of registration as they stand and as they are likely to evolve;
- Risks of non-compliance from a business activity associated with the supply of a WELS product including:
 - Possible factors such as unforeseen problems with the durability of labels;
 - Attitudes, commitment and understanding of staff or contractors (and the scope of the 'change-management' and awareness training to be included in the new arrangements);
 - Business variables to be managed with appropriate precautionary arrangements for risks arising from:
 - Phasing out WELS products that are at the end of their 'commercial life' while ensuring your CRM arrangements continue to apply until the WELS product ceases to be supplied; or
 - A lack of well timed CRM arrangements for newly developed WELS products; or
 - A lack of business arrangements for preventing and providing contingencies for errors, such as WELS products being dispatched or

received without labels or with incorrect labels; and

- An imbalance between cost management and the provision of sufficient risk-management resources; and
- Any lack of certainty requiring reporting to the WELS Regulator and/or needing appropriate precautionary and/or prudently timed procedures and further research.

5.3 Development and implementation

Designing and building a system for CRM includes the following.

- Identify, develop, gain executive/management approval and implement organisational control mechanisms and procedures to manage your compliance risks. These mechanisms and procedures include:
 - Management plans;
 - Provision of resources;
 - Operational procedures;
 - Quality assurance of CRM arrangements, fault checking and response plans;
 - Control documentation;
 - Self-monitoring reports; and
 - Procedures for the review and revision of the CRM arrangements;
- The setting of performance indicators and operational targets and assigning responsibilities and reporting mechanisms through the organisation structure;
- Identification, development and provision of training and change-management/awareness programs and manuals;
- Identification and development of competencies and responsibilities for inclusion in management, staff and contractor's contracts;
- Retention and appropriate provision of records; and
- Internal procedures to address non-conformance to the arrangements and to specify and initiate corrective, educational and preventative actions.

5.4 Prevention, mitigation, and monitoring principles

5.4.1 Prevention and mitigation

Prevention and mitigation is about assessing CRM risks and designing and using the above CRM systems (etc) to detect compliance problems and solve them in advance, or to build in processes or margins to control unforeseeable error or

mitigate its impacts. What are the kinds of issues that could arise from a risk assessment that you may need to address?

For example, do you have arrangements to ensure WELS products are correctly tested and registered? Do you have arrangements to have WELS products correctly labelled prior to supply? Do you feel these arrangements are adequate? How did you come to this risk management decision?

If you are a manufacturer, what are some other possible risks of non-compliance? One risk might be a lack of suitable arrangements to ensure that labels are correctly applied. What is your operational solution to ensure that WELS products are not dispatched for supply without or with an incorrect label (which will be an offence under the Act)?

Examples of CRM solutions:

- *Provision of personnel and procedures for checking WELS products. Is your risk and business need significant enough to support periodic inspections by your own staff to assure the quality of your risk management arrangements?*
- *Development of documentation (possibly certification on-packaging) and operational steps that must be undertaken to label and check the consignment before dispatch.*

Another risk might emerge from a lack of arrangements to ensure a retailer can be alerted to check the product's label before they offer it for supply to consumers (which could be an offence for a manufacturer and a retailer). How do you assist retailers to identify situations where you and they may be non-compliant and get advice on your preference on how they/you avoid an offence?

Examples of CRM solutions:

- *Provide advice (on or within packaging) to check that WELS products have a WELS label attached and include instruction on what to do, what not to do and who to contact to obtain and attach any missing labels.*
- *Provide advice (on or within packaging) for retailers to contact a responsible manager if breaches of labelling requirements seem to occur frequently.*

If you are a retailer what are some other possible risks of non-compliance? One risk might arise from a lack of suitable arrangements to ensure that received WELS products (from manufacturers or importers) have labels correctly applied, before you "accept" them and move them to the public/sales area of your business for supply to consumers. What is your operational solution to ensure that WELS products are not dispatched for supply without a label or with an incorrect label (which will be an offence under the Act)?

Examples of CRM solutions:

- *Provision of personnel and procedures for checking WELS products that are received. Is your risk and business need significant enough to support periodic inspections by your own staff to assure the quality of your risk management arrangements?*
- *A policy of holding WELS products (in storage away from public sales areas) that do not meet labelling requirements until the label can be supplied or a policy of returning these WELS products to be labelled.*
- *Development of documentation (e.g. a fax or email 'form') and operational steps that must be undertaken to store/return the item(s) and advise the WELS manufacturer or importer?*

Another risk might be the potential for misrepresentation of a label by sales staff acting on suppliers' sales-incentive programs. What kinds of things could be done to avoid this?

- *A company policy and staff awareness/performance measures to ensure that sales staff acting on supplier sales incentives do not misrepresent the WELS labels.*

We are interested in collecting examples and principles of these kinds of prevention and mitigation procedures. We will assess any you can provide in order to develop further principles for publication in CRM guides for suppliers over time.

Representatives of suppliers can seek the routine advice of WELS officials on compliance status and risks and better practice options.

5.4.2 Internal monitoring and reporting

Suppliers should use their own routine monitoring reports as a tool to evaluate and revise compliance risk management effectiveness and to input into existing or future WELS regulatory arrangements.

Detailed monitoring measures to help prevent a non-compliance include:

- Monitoring information on the state of CRM to be recorded and provided to suppliers' decision-makers so that periodic review can provide for the prevention of emerging compliance management risks and improvements to long-term management practices; and
- Sufficient preparations for the detection and management of an occurrence of an imminent risk or an actual offence, by putting in place preventative treatments, contingency arrangements and incident reporting procedures which are:
 - Credible;

- Effective;
- Periodically reviewed and then assessed by management to keep pace with the changing state of knowledge, possible new compliance requirements under the Act, emerging issues (such as an unforeseen outcome of the Act and Regulations or Standard) and best practice; and
- Designed to balance the extent of your provision of CRM arrangements with concerns for the costs of the action in a way that you judge will be considered effective and defensible by the courts.

5.4.3 Reporting to the WELS Regulator

Reporting to the WELS Regulator could be necessary to:

- Show where the arrangements under the Scheme or other factors are confounding the objectives of CRM or WELS;
- Seek help in mitigating a possible offence; and
- Provide annual or other reports that may be a condition of registration.

When a supplier's monitoring and prevention steps fail and an offence has occurred, it would be appropriate to contact us to obtain our advice and assistance in mitigating the impact of the offence (eg before spreading the problem through product distribution processes).

On a case-by-case basis we may, as an alternative to taking legal action on an alleged offence, divert non-compliant organisations towards compliance through education and administrative actions. This will be done as part of an operational approach that will:

- Maintain the WELS Regulator's capacity to take enforcement action where necessary; and
- Not compromise the objectives of the scheme or the credibility of the label, or the standard.

Contact us immediately letting us know:

- What has occurred;
- Immediate steps taken to remedy the problem; and
- The name and 24-hour contact details of a representative who can respond to further requested actions from the WELS Regulator.

From this point the WELS Regulator and a supplier can identify:

- Steps necessary to address the offence;
- Changes in procedure to ensure recurrence of the offence can be avoided;

and

- A proposed implementation plan for any further follow-up actions.

5.5 Continual improvement of CRM

It is important to report, review, revise and reward. This can be a simple annual meeting by the employees of a small supplier with assessments and decisions recorded in minutes, or it can be a formal review facilitated by a comprehensive internal audit. Like all elements of CRM it depends on the significance of your CRM risks, defensibility of your arrangements and your business need. The following CRM techniques may be useful to consider.

- Arrange the routine review and revision of the CRM approach, resources, state of knowledge and systems, including:
 - Risk assessment(s);
 - Organisation performance;
 - Performance indicators and operational targets;
 - Management plans;
 - Adequacy of resources;
 - Operational procedures for the detection, prevention and management of compliance risks;
 - Offence incident preparedness and response plans;
 - Control documentation and monitoring reports;
 - Training and awareness programs; and
 - Efficacy of staff and contractor competencies and awareness, etc.
- Disseminate principles, internal sharing of experiences, and performance outcomes through formal reports, new training and organisational newsletters etc.
- Provide awards for best practice outcomes or new solutions to problems.
- Provide reports to the WELS Regulator about barriers to effective CRM and possible improvements to the national regulatory system for WELS.
- Promote achievements, external sharing of knowledge and participation in industry awareness-raising activities/forums, and marketing of expertise.

Suppliers seeking to review their compliance risk management arrangements can invite WELS audits or indicative inspections. Suppliers could take advantage of these WELS CRM tools to review existing management practices to improve compliance performance and build better systems and practices. Suppliers could use these processes to resolve emerging risks to compliance performance

arising from unforeseen factors; and/or make suggestions to improve provisions within the legislation or technical specifications.

6 Conceptual origin

This guide draws on contemporary principles and systems for managing quality, environmental impact mitigation, compliance and risk. CRM procedures can be developed into a cohesive system to provide for compliance and best practice reflecting ISO 9000 (Quality Assurance Systems) and ISO 14000 (Environment Management Systems), particularly involving periodic review and revision to underpin continual improvement. Also of use may be the Australian and New Zealand Standards *AS3806 Compliance Programs* and *ASNZS 4360 Risk Management*. For more information on these standards, systems or accreditation visit the Standards Australia internet site (<http://www.standards.com.au>).

Environment Management System (EMS) and Quality Assurance (QA) systems are internationally recognised and nationally accepted as:

- Delivering systematic and precautionary responses to management of risks; and
- Providing continual improvement leverage to deliver risk management outcomes and reduce management costs.

7 Costs and benefits of CRM

It is recognised that in some instances taking CRM approaches may mean increased up-front costs but that they often yield cost-effectiveness benefits over time.

Determining the extent of investment in CRM is a matter for suppliers.

While we recognise the common sense desire to avoid waste in adopting measures to meet obligations under the WELS Act, we advise caution to ensure that you do not under-allocate resources to CRM and compromise your capacity to comply with the Commonwealth Criminal Code and the WELS Act. It is advisable to document and periodically review your CRM resource decision-making. Such a resource review should consider whether the regulatory requirements have changed or whether there are new issues that you have identified through your own CRM internal review mechanisms.

The capacity of a supplier to meet regulatory obligations and/or decide whether the required risk management is logistically or financially possible is an important consideration for suppliers. In some circumstances it might be necessary/prudent for suppliers to consider the costs of effective CRM at the outset of business appraisals and product development.

The Regulator has the capacity to cancel or suspend the registration of a WELS product, which would make it an offence to supply that product (other than a flow controller) in Australia. This would be a reviewable decision under Part 11 of the WELS Act. Deregistration of a WELS product is a 'cost' that effective CRM can help avoid.

A systematic approach to compliance that is underpinned by continual improvement allows for identification of the most efficient and effective available actions suppliers can take to meet responsibilities. A well-informed systematic approach can save time and money with its:

- Inherent efficiency and cost-effectiveness;
- The avoidance of penalties and costs associated with offences;
- A structure for effective decision making; and
- Increases in social and market acceptability of products.

We recognise that suppliers who work towards better compliance performance and the effectiveness of the WELS CRM procedures enhance:

- The cost-effectiveness of the scheme for suppliers and the participating governments; and
- The success of the Scheme, which aims to save valuable water for Australians and the environment through facilitating improved consumer choice.

These factors will be considered in annual and 5-year reviews of the cost recovery elements and the level of the registration fees.

8 Participation in WELS CRM continual improvement

This document is a working document. We welcome input from suppliers and the Australian community. This document is expected to develop as a result of:

- Ongoing observations and assessment by WELS officials when monitoring and conducting other CRM activities;
- Feedback from suppliers as a result of WELS monitoring and other WELS CRM activities;
- Annual review by WELS officials, the WELS Advisory Committee and the WELS Regulator; and
- Independent review of regulatory arrangements under the WELS Act after five years.

We encourage your participation in WELS CRM continual improvement to maintain or improve the efficiency and cost-effectiveness of the Scheme over time. Queries and feedback about WELS CRM arrangements and WELS legislation, specifications, information and systems are always welcome.

Comment and Feedback may be sent to

WELS Scheme

Water Policy Branch

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